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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID MCGUIRE,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0607-CR-382

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0605-CM-88293

January 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

David McGuire appeals his conviction for carrying a handgun without a license, a Class A misdemeanor. We affirm.

Issue

McGuire raises one issue for our review: whether the evidence was sufficient to support his conviction.

Facts

On the evening of May 16, 2006, Marion County Sheriff's Deputy Matthew Morgan drove past a house he knew to be a location of drug activity. He observed a Chevrolet Blazer parked in the driveway. Deputy Morgan checked the vehicle's license plate number and discovered that it was not registered to the Blazer. Later during his shift, Deputy Morgan observed the same vehicle being driven along a roadway.

Deputy Morgan stopped the Blazer and upon approaching it, noticed that McGuire appeared to be feigning sleep in the back seat. Deputy Morgan asked the driver and McGuire to identify themselves and returned to his patrol car to verify the information. While Deputy Morgan was in his car, he noticed McGuire moving around and leaning down in the back seat of the Blazer. After Deputy Morgan learned that McGuire had two outstanding warrants, he and Deputy Larry Craciunoiu, who had arrived to assist Deputy Morgan, asked McGuire to get out of the vehicle.

After McGuire exited the vehicle, the deputies discovered a handgun under the back seat behind the driver's seat. The deputies arrested McGuire. That same day, the State charged McGuire with carrying a handgun without a license, a Class A

misdemeanor. On June 21, 2006, the trial court tried McGuire and found him guilty. He now appeals his conviction.

Analysis

When an appellant challenges the sufficiency of the evidence supporting his or her conviction, we will affirm if there is substantial evidence of probative value to support each element of the crime from which a reasonable trier of fact could have found the appellant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). “[W]e neither reweigh the evidence nor judge the credibility of the witnesses” Id. (quoting Davis v. State, 813 N.E.2d 1176, 1178 (Ind. 2004)). “It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court’s ruling.” Wright, 828 N.E.2d at 906 (citations omitted).

Here, McGuire contends only that the State failed to present sufficient evidence that he possessed the handgun. We conclude that the evidence was sufficient in this regard.

“A conviction for possession may rest on proof of actual or constructive possession.” Bradshaw v. State, 818 N.E.2d 59, 62 (Ind. Ct. App. 2004). To prove constructive possession, the State was required to prove that McGuire had the intent and capability to maintain dominion and control over the handgun found in the Blazer. Id. That intent can be inferred from, among other things, the defendant’s proximity to the contraband and attempted flight or furtive gestures. Collins v. State, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005), trans. denied. In addition to intent, the State must also prove that

McGuire had knowledge of the weapon in the vehicle. Bradshaw, 818 N.E.2d at 63. Knowledge may be inferred from the fact that the gun was found in a place under McGuire's dominion and control. Id. Knowledge may also be inferred from additional circumstances indicating that a defendant was aware of the gun's presence. Causey v. State, 808 N.E.2d 139, 143 (Ind. Ct. App. 2004).

Here, Deputy Morgan testified that at the time he stopped the Blazer, McGuire was seated in the middle of the vehicle's back seat and that the driver was the only other person in the vehicle. Deputy Morgan then observed McGuire "moving around in the back seat of the vehicle" and "lean[ing] down," actions that Deputy Morgan characterized as "furtive movements." Tr. p. 6. Upon searching the "immediate area, which was in the reach of Mr. McGuire,"—specifically, underneath the back bench seat—Deputy Craciunoiu found a handgun. Tr. p. 8.

This case presents us with facts similar to those in Causey. In that case, police stopped the vehicle in which Causey and two others were riding. Causey, 808 N.E.2d at 144. After stopping the vehicle, officers observed Causey, who was seated in the front passenger seat, making furtive movements by leaning over and "seemingly push[ing] something down between the seats or into the center console." Id. A search of the vehicle revealed a handgun under the front passenger's seat. Id. Based on Causey's furtive movements and his proximity to the weapon, we held that the State's evidence was sufficient to prove that Causey constructively possessed the gun and affirmed his conviction for possession of a firearm by a serious violent felon. Id.

Here, too, we conclude that the testimony by the deputies that the gun found in the vehicle was well-within McGuire's reach is sufficient evidence from which the trial court could reasonably infer that McGuire constructively possessed the gun. McGuire's contentions that there were two individuals inside the vehicle to whom the gun could have belonged and that the driver could have placed the gun beneath the back seat prior to McGuire's riding in the vehicle are invitations to reweigh the evidence. We cannot do so. The State's evidence is sufficient to prove that McGuire possessed the gun.

Conclusion

The State's evidence is sufficient to support McGuire's conviction. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.